

The 30th Anniversary of The Children Act 1989: Is It Still Fit For Purpose?

Professor Jo Delahunty QC



Jasmine Beckford



Kimberley Carlile



Kyra Henry

The Reforms

Pre-1989 Act

- Care proceedings were modelled on criminal proceedings against a juvenile delinquent
- Local authorities could assume parental rights over the children in their so-called 'voluntary care' simply by the councillors passing a resolution to do so, without consulting or involving the parents or the family at all
- Local authorities had no obligation to consult the child or the family about their decisions (e.g. where the child should be placed, or whether to keep the child in touch with her family)
- Wider family members were not consulted, had very little opportunity to make their voices heard, and were generally thought to be part of the problem rather than part of the solution

Baroness Hale, 2014

The Reforms

Post-1989 Act

- Local authorities have a new duty to promote the upbringing of children in need by their families so far as this is consistent with their welfare duty to the child themselves
- Part III & Schedule 2 Children Act 1989: the principle that the best place for a child is in their home, with support if necessary when the family are struggling to offer adequate care
- Parents no longer have to give notice before withdrawing their children from voluntary arrangements
- Local authorities are no longer able to assume parental rights over children by administrative resolution

The Reforms

Post-1989 Act

Section 1 of the Children Act sets out three general principles:

- the welfare of the child is paramount
- delay is likely to prejudice the welfare of the child
- the court shall not make an order unless to do so would be better for the child than making no order (the 'No Order' Principle)



Key components of The Children Act 1989

The best place for a child is at home

- Part III and Schedule 2
- Children in Need
- S 20
- The Family
- Assessment

When home poses a risk to the child

- EPO
- S 31 'threshold criteria'
- Paternalism/social engineering
- 26 weeks
- Experts
- Division of responsibilities

The Child: A Person, Not Property

Has the Act succeeded in recognising the child as an independent entity?

The Reforms

Pre- 1989 Act

- Custody vs access orders



The Reforms

Pre- 1989 Act

- Custody vs access orders

Post- 1989 Act

- Residence vs contact orders



The Reforms

Pre- 1989 Act

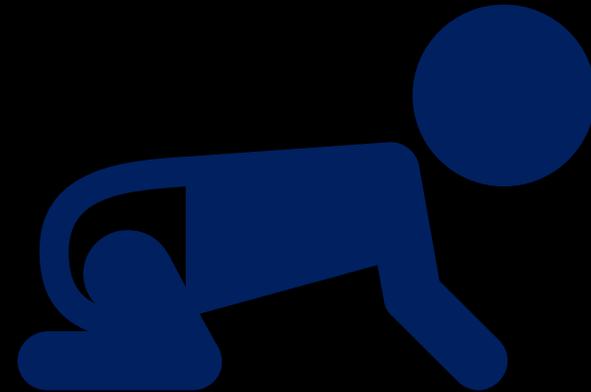
- Custody vs access orders

Post- 1989 Act

- Residence vs contact orders

Post-2014 Act

- Child Arrangement orders



Evolving Concepts: Family, Best Interests and Harm

Re M (Children) [2017]

A transgender woman brought an application for contact with her five children after being forced to leave the North Manchester Ultra-Orthodox Jewish community after being shunned as a result of her being trans.

The first instance Judge (Mr Justice Peter Jackson as he then was) decided that the community's threat to ostracise the children posed a risk of psychological harm to them so they should be limited to receiving letters from her 4 times per year.

The Court of Appeal overturned this decision.

Evolving Concepts: Family, Best Interests and Harm

Re M (Children) [2017]

A transgender woman brought an application for contact with her five children after being forced to leave the North Manchester Ultra-Orthodox Jewish community after being shunned as a result of her being trans.

- The judge hearing the matter must act as a "judicially reasonable parent" judging the child's welfare by the standards of reasonable men and women of today in 2017 that is people who are "receptive to change, broadminded, tolerant, easy-going and slow to condemn."
- The judge had failed to address 'head on' the human rights and discrimination issues that arose in the case as he should have done asserting, "Even secluded religious communities within society are not above the law of the land."

Has the Act stood the Test of Time?

**A type and nature of risk
not within the
contemplation of the
legislators**

**Funding : the fabric of the
Family Justice System**

**Resources : meeting the
Acts ideals**

Human Error

Evolving Concepts: Family, Best Interests and Harm

Radicalism

The Children Act 1989 has been supplanted on occasions by its senior relative: Wardship.

Did this represent a failure of The Children Act? **No.**

The court was faced with a new type of risk of harm where the child was the driver of their own misfortune with no blame attached to the parent for that risk arising. The child was not beyond parental control in the way the Children Act 1989 envisaged.



Partnership Over Paternalism

Remember Jasmine Beckford, Tyra Henry?

Remember Cleveland ?

Have we got the balance right ?

Has the Act succeeded in fostering constructive collaboration between State and family?

Has the Act enabled timely intervention when protection is required?



Peter Connelly



Poppi Worthington



Victoria Climbié

Undermining Success

The screenshot shows the top navigation bar of The Guardian website. On the left, there is a blue bar with the text "Support The Guardian" in yellow, followed by two yellow buttons: "Contribute →" and "Subscribe →". On the right, there is a "Sign in" link with a user icon, and the "The Guardian" logo in white. Below this is a dark blue navigation bar with white text for "News", "Opinion" (which is underlined with an orange line), "Sport", "Culture", and "Lifestyle". To the right of this bar is a yellow circular menu icon. Below the navigation bar is a white bar with links for "The Guardian view", "Columnists", "Cartoons", "Opinion videos", "Letters", and "More". The main content area is white and features the article title "The state has a terrible secret: it kidnaps our children" in a large, dark blue serif font. Below the title is the author's name "Louise Tickle" in a smaller, orange, italicized serif font. On the right side of the image, there is a vertical column of text from another page, partially visible, which includes the words "ould", "ould", "ated", "GH or", and "his".

Support The Guardian

Contribute → Subscribe →

Sign in

The Guardian

News Opinion Sport Culture Lifestyle

The Guardian view Columnists Cartoons Opinion videos Letters More

Opinion Child protection

The state has a terrible secret: it kidnaps our children

Louise Tickle

ould
ould
ated
"
GH or
his

Was it ever thus...There is no magic porridge pot...

Money : training

Money : community resources

Money : legal aid

Undermining the Reforms

- April to June 2018, the proportion of disposals where neither the applicant nor respondent had legal representation was 38%, an increase of 21% since April to June 2013.
- The proportion of cases where both parties had legal representation dropped by 16% to 19% over the same period.

Family Court Statistics Quarterly, England and Wales, April to June 2018", Ministry of Justice, 27 September 2018



Pictures of the year
G2 special issue

The Guardian

Thursday
27 December 2018
Issue No 53602
£2.00

Legal aid cuts force parents to drop fight for children

Owen Bowcott
Amelia Hill
Pamela Duncan

Deep cuts to legal aid have inflicted such disarray in family courts that parents are abandoning efforts to maintain contact with their children, the Guardian has been told, while one of the main architects of the austerity measures has admitted they are "draconian".

Austerity since 2012 has reduced funding by about £950m a year in real terms, causing an alarming rise in the number of people forced to represent

themselves. The number of people receiving legal aid in England and Wales has fallen more than 80% in eight years. Critics say the result is unnecessary conflict and stress, and unsatisfactory justice.

The former justice minister Tom McNally, who pushed the 2012 cuts through parliament, has told the Guardian that although they were needed after the 2008 banking crash, they persisted for too long.

"If we really wanted to make substantial reforms to the criminal justice system, it was almost impossible with the continuation of austerity," Lord McNally said. He called for a national

consensus to be forged on the necessary level of legal aid expenditure.

Among multiple indignities inflicted by the cuts, lawyers say one of the worst is that victims of domestic violence are still being cross-questioned by ex-partners despite government pledges to end the practice.

A wide-ranging Guardian investigation has revealed that the cuts to legal aid have:

- Swamped the family courts with unrepresented litigants, discouraging many from continuing with proceedings. The number of people accessing legal aid in family matters has fallen 88% in seven years.

- Exposed more victims of domestic violence to cross-examination by ex-partners.
- Prevented hundreds of thousands of people from pursuing justice in other areas such as housing, debt, employment, clinical negligence, immigration, welfare payments and education.
- Failed to update financial eligibility thresholds, which lawyers say has resulted in few defendants in work being able to claim legal aid in criminal cases, raising fears of miscarriages of justice.
- Forced expert lawyers, deprived of funded work, to

Action call as £3.2bn race pay gap is revealed

Gwyn Topham

Black and minority ethnic employees are losing out on £3.2bn a year in wages compared with white colleagues doing the same work, according to a study that adds to pressure on the government to introduce mandatory reporting of race pay gaps.

Ministers have been urged to press ahead with proposals to force large firms to report their ethnicity pay gap, after the research showed the extent of the disparity for the 1.9 million workers who are black or from a Pakistani, Indian or Bangladeshi background. After taking account of different qualifications and job types, the analysis by the Resolution Foundation found the gap rose to as much as 17%, or £3.90 an hour, for black male graduates.

A law that came into force this April exposed the gap between male and female employees, finding eight out of 10 firms paid men more than women. The prime minister, Theresa May, launched a consultation in October on whether there should be mandatory reporting of ethnicity pay gaps.

The Resolution Foundation said its research showed the ethnicity pay gap represented "a huge blow to the living standards of those affected".

It found male graduates of Pakistani and Bangladeshi background earned an average £2.67 an hour (12%) less, while among female graduates, black women had the biggest pay penalty, of £1.62 an hour (9%). In general, the differentials were lower among non-graduates.



Trump surprises troops in Iraq with secret visit

Donald and Melania Trump visited US forces at al-Asad airbase in Iraq over Christmas. Last week, the president announced the withdrawal of troops from Syria; his defence secretary, James Mattis, resigned shortly afterwards **Full story Page 4** →

Pep Guardiola left singing the blues

Liverpool pull clear of Man City amid packed Boxing Day football programme

Sport Page 48 →

The Child's Voice

Thursday, 26 April 2018, 6:00PM - 7:00PM

Barnard's Inn Hall

The Child in the Family Court Room: Whose Child is it Anyway?

Professor Jo Delahunty QC

Fit For Purpose?

30 years on, is the Children Act 1989 (still) fit for purpose?

We need to honour the Children
Act 1989- not change it.